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September 20, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Reply to Opposition of Davis."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 
John W. Hunter

By: 
Stephen F. Talverton

Enclosure

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OFFICE OF THE SECRETARY

B: CATON. 109

REPLY TO OPPOSITION OF DAVIS

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Sections 1.229 (d) and 1.294 (c)(1) of the Commission's Rules, hereby submits this reply to opposition. On September 15, 1993, ORA filed a motion to enlarge the issues against Shellee F. Davis ("Davis"). On September 17, 1993, Davis filed an opposition thereto. In reply to the opposition, ORA submits the following comments.

In her hearing exhibit, Davis proffered numerous newspaper and magazine articles about her current business, Britt Business Systems, Inc. ("BBS"), and about her business accomplishments (Davis Ex. 1, attachments A-J). Therein, Davis represented that Ben Davis, her brother-in-law, was a partner with her in BBS in 1991 and that he was General Manager and Vice President (Davis Ex. 1, attachments B and E). When confronted at the hearing with these representations, Davis admitted that they were not true and that she had knowingly given the news reporter false information (Tr. 439-444).

In her opposition, at p. 3, and n. 2-3, Davis contends that she did not intentionally mislead or give the news reporter knowingly false information. However, Davis admitted at the hearing that the information was false, that she knew that it was false, and that she willfully gave this false information to the news reporter to be acted upon and reported in the newspaper. Thus, the false statements were knowing and willful and were not the result of a mistake or some misunderstanding. WHW Enterprises, Inc., 89 FCC2d 799, 819 (Rev. Bd. 1982); Scott & Davis Enterprises, Inc., 88 FCC2d 1090, 1099-1100 (Rev. Bd. 1982); High Country Communications, 5 FCC Rcd 6237, 6238, para. 9 (1990).

In her opposition, at pp. 2-3, Davis contends that she did not make any misrepresentations to a government agency or make any statements to the news reporter under penalty of perjury. However, Davis offered into evidence as part of her hearing exhibit the newspaper articles containing the false statements. Her hearing exhibit contains at the end a declaration under penalty of perjury, dated August 2, 1993, stating that she reviewed the foregoing exhibit, which includes the newspaper articles, and that it is true and correct.

Accordingly, there is no question that this declaration, under penalty of perjury, is false in view of Davis' admission at the hearing that the newspaper articles in the hearing exhibit are not true and correct. On August 2, 1993, Davis swore to the Commission that all of the contents of her hearing exhibit, including the newspaper articles, are true and correct. At the hearing, she admitted that some of the contents are not true and correct. Davis can not have it both ways.

In her opposition, at pp. 2-3, Davis contends that newspaper articles are not evidence in Commission proceedings. Although this is usually the case, Davis herself attempted to place the newspaper articles into evidence in order to prove the truth of the matters asserted and attempted to place them into evidence without any limitations (Tr. 63-64, 77-78). She even swore to the accuracy of the matters in the newspaper articles as to which she had personal knowledge (Davis Ex. 1, declaration, dated August 2, 1993). Again, Davis can not have it both ways. She sought to use the newspaper articles as evidence for her own advantage and can not now complain that they are being used as evidence against her.

Accordingly, based upon Davis' admissions at the hearing, a substantial and material question of fact is raised as to whether she made knowing and intentional misrepresentations in her August 2, 1992, declaration under penalty of perjury that all of the contents of her hearing exhibit as to which she has personal knowledge are true and correct. See, Richardson Broadcast Group, 7 FCC Rcd 1583, 1585, para. 9 (1992), applicant disqualified based upon admissions that she had made false statements. FCC v. WOKO, Inc., 329 U.S. 223, 227 (1946), even useless and immaterial misrepresentations are disqualifying.

In its motion to enlarge the issues, ORA contended that another basis to specify a misrepresentation and lack of candor issue is Davis' evasive and candorless testimony as to her total compensation from BBS. See, Richardson Broadcast Group, 1584, para. 6. It took the Presiding Judge considerable time and effort to elicit from Davis this simple fact (Tr. 421-426).

In her opposition, at p. 4, Davis claims that she was "confused" by this line of questioning as to her total compensation from BBS. However, no person could reasonably be confused by such a simple and direct question.


Davis ignores that she had a readily apparent motive to attempt to conceal from the Presiding Judge her total compensation from BBS. The more she makes from BBS, the more unlikely it is that she will sell or dispose of this business in order to fulfill her integration pledge of full-time management of the Westerville station.

WHEREFORE, in view of the foregoing, ORA requests that misrepresentation and lack of candor issues be specified against Davis based upon her admissions at the August 31, 1993, hearing which demonstrate that her declaration under penalty of perjury, dated August 2, 1993, with respect to her hearing exhibit is false and misleading and also that issues be specified based upon her evasive hearing testimony as to her total compensation from BBS.

Respectfully submitted,

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September 20, 1993

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CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 20th day of September, 1993, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Reply to Opposition of Davis" to the following:

The Honorable Walter C. Miller*
Administrative Law Judge
Federal Communications Commission
Room 213
2000 L Street, N.W.
Washington, D.C. 20554

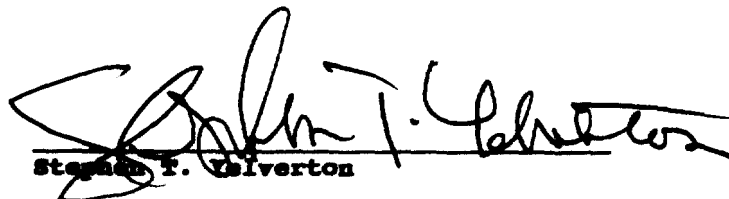
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*Hand Delivery